

AMENDED IN SENATE APRIL 19, 2006

AMENDED IN SENATE APRIL 17, 2006

SENATE BILL

No. 1818

Introduced by Senator Alarcon

February 24, 2006

An act to ~~amend Section 1021.5 of the Code of Civil Procedure,~~
add Section 801 to the Government Code, relating to ~~attorneys'~~
attorney's fees.

LEGISLATIVE COUNSEL'S DIGEST

SB 1818, as amended, Alarcon. Attorney's fees.

Existing law provides that in any civil action to appeal or review the award, finding, or other determination of any administrative proceeding, except as specified, where it is shown that the award, finding, or other determination of the proceeding was the result of arbitrary or capricious action or conduct by a public entity or an officer thereof in his or her official capacity, the complainant, if he or she prevails in the civil action, may collect reasonable attorney's fees, as specified.

This bill would provide that in any civil action brought by a big box retailer, as defined, to challenge the validity or application of an ordinance, rule, regulation, or initiative measure regulating zoning that is adopted by any local government entity, the court shall award attorney's fees and other litigation expenses to the local governmental entity if the local governmental entity is the prevailing party and the court finds that the big box retailer acted in an arbitrary or capricious manner in bringing the action.

~~Under existing law, a court may award attorney's fees to a successful party against one or more opposing parties in any action~~

that has resulted in the enforcement of an important right affecting the public interest and if a significant benefit has been conferred on the general public or a large class of persons and other conditions are satisfied. With respect to actions involving public entities, this provision applies to allowances against, but not in favor of, public entities.

This bill would provide that a public entity may recover attorney's fees as the prevailing party upon motion to the court if it can show that a significant benefit has been conferred on, or an important principle has been established for the benefit of, the public.

Vote: majority. Appropriation: no. Fiscal committee: ~~yes~~no. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 801 is added to the Government Code,
2 to read:

3 801. (a) In any civil action brought by a big box retailer to
4 challenge the validity or application of an ordinance, rule,
5 regulation, or initiative measure regulating zoning that is
6 adopted by any local government entity, the court shall award
7 attorney's fees and other litigation expenses to the local
8 governmental entity if both of the following apply:

9 (1) The local governmental entity is the prevailing party.

10 (2) The court finds that the big box retailer acted in an
11 arbitrary or capricious manner in bringing the action.

12 (b) For purposes of this section, "big box retailer" has the
13 same meaning as defined in Section 53084.

14 SECTION 1. ~~Section 1021.5 of the Code of Civil Procedure~~
15 ~~is amended to read:~~

16 ~~1021.5. (a) Upon motion, a court may award attorney's fees~~
17 ~~to a successful party against one or more opposing parties in any~~
18 ~~action that has resulted in the enforcement of an important right~~
19 ~~affecting the public interest if all of the following are met:~~

20 ~~(1) A significant benefit, whether pecuniary or nonpecuniary,~~
21 ~~has been conferred on the general public or a large class of~~
22 ~~persons.~~

23 ~~(2) The necessity and financial burden of private enforcement,~~
24 ~~or of enforcement by one public entity against another public~~
25 ~~entity, are such as to make the award appropriate.~~

1 ~~(3) Those fees should not in the interest of justice be paid out~~
2 ~~of the recovery, if any.~~

3 ~~(b) With respect to actions involving public entities, no claim~~
4 ~~shall be required to be filed therefor. A public entity may recover~~
5 ~~attorney's fees as the prevailing party upon motion to the court if~~
6 ~~it can show that a significant benefit has been conferred on, or an~~
7 ~~important principle has been established for the benefit of, the~~
8 ~~public.~~

9 ~~(c) Attorney's fees awarded to a public entity pursuant to this~~
10 ~~section shall not be increased or decreased by a multiplier based~~
11 ~~upon extrinsic circumstances, as discussed in Serrano v. Priest,~~
12 ~~20 Cal. 3d 25, 49.~~